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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/120,105	09/10/1993	ANDREAS WINTER	HOE92F294	1612

23416 7590 01/27/2003

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EXAMINER

WILSON, DONALD R

ART UNIT	PAPER NUMBER
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1713

DATE MAILED: 01/27/2003

45

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

08/120,105

Applicant(s)

WINTER ET AL.

Examiner

D. R. Wilson

Art Unit

1713

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 December 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15,17-19,21,25 and 27-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15,17-19,21,25 and 27-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: |

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DETAILED ACTION

Response to Request for Reconsideration

1. Applicant's request for reconsideration filed 12/16/02, has been fully considered, but is not deemed to be persuasive in overcoming the outstanding rejections, which are maintained as is summarized below.

Previously Cited Statutes

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action.

Objection to New Matter

3. **The amendments filed 1/27/02 are objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure.** 35 U.S.C. 132 states that no amendment shall introduce new matter

into the disclosure of the invention. The added material which is not supported by the original disclosure has previously been set forth in Detailed Action § 8 of the previous Office Action.

4. Applicant's statement that the specification at page 14, lines 16-18, teaches that "--- melting ranges are determined at heating/cooling rates of 20°C /min" does not follow from the citation, which specifically states "[m]elting points, peak widths, melting ranges and crystallization temperatures were determined by DSC spectrometry (heating/cooling rates of 20°C /min)" (underlining added). As previously pointed out, "[t]here is no basis in the specification as filed for determining melting ranges from a DSC spectrum using both heating and cooling, i.e., 'heating/cooling rates of 20°C/min'." The argument that one of ordinary skill in the art would have the knowledge that normally thermal history is erased to obtain unambiguous material properties is not convincing because it does not follow that such a procedure is always or necessarily used, and the specification is silent on this matter.

5. Applicant is still required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112, First Paragraph

6. **Claims 15, 17-19, 21-25 and 27-32 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application**

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was filed, had possession of the claimed invention. The basis of this rejection was stated in Detailed Action § 11-13 of the previous Office Action.

7. Applicant repeats previously presented arguments, which are not deemed to be persuasive for reasons of record.

35 U.S.C. § 112, Second Paragraph, Rejection

8. **Claims 15, 17-19, 21-25 and 27-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.** The basis of this rejection was stated in Detailed Action § 14-15 of the previous Office Action. Applicant either relies upon earlier arguments, which are not deemed to be persuasive for reasons of record, or provides no argument at all, and the rejection is maintained for the reasons summarized below.

9. The language of Claim 17 is indefinite because:

- a. A bimodal or multimodal melting range would have more than one melting peak and it is indefinite as to which peak either "the peak" or "the melting peak" refers.
- b. The language is further indefinite because as noted above the crystallinity of both the components and the blend would be expected to be a function of the thermal history of the materials, yet the specification provides no data on thermal conditioning of the samples prior to measurement.
- c. The "half-intensity width of the melting peak" and similarly, "the width at quarter peak height" are indefinite because it is unclear which peak is being referenced, or for multi-modal melting ranges how the peaks are resolved.
- d. The language is further indefinite because of the language "can be bimodal or multimodal", as it is unclear as to whether or not the melting range is bimodal or multimodal.
- e. The definition of R^3 and R^4 "--- where the substituents ---- form together with the atoms connecting them a ring" is indefinite, because it can't be told which atoms are connected together.

Rejection Under 35 USC § 112, Fourth Paragraph

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10. **Claim 32 is rejected under 35 U.S.C. 112, fourth paragraph, for not further specifying a limitation of the subject matter in the parent claim(s).** The basis of this rejection was stated in Detailed Action § 16 of the previous Office Action. Applicant's repeated argument traversing the rejection is not deemed to be persuasive for reasons of record.

Obviousness Double Patenting

11. **Claims 15, 17-19, 21-25 and 27-32^{11a} rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of U.S. Patent No. 5,700,886 (Winter 886).** The basis of this rejection was stated in Detailed Action § 11 of the Office Action of 4/23/00 and has been further discussed in Detailed Action § 18 of the Office Action of 3/6/01.

12. Applicant's has stated a willingness to file a terminal disclaimer when the other rejections are withdrawn. However, as a disclaimer has not been received the rejection is maintained.

Action Is Final

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

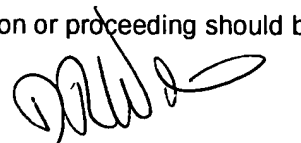
14. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Future Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. R. Wilson whose telephone number is 703-308-2398.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached on 703-308-2450. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications. The unofficial direct fax phone number to the Examiner's desk is 703-872-9029.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-2351.


DONALD R. WILSON
PRIMARY EXAMINER